HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. A.O. 782 of 2001

Guman Singh & others ....Petitioner

Vs.

Rudri Singh & others

~~Approved~~ for reporting.

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~~Not approved for reporting~~

Date of decision 9.8.2004

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 782 of 2001
Old No. 975 of 1984

Guman Singh & another .....Petitioner

Versus

Rudri Singh & others .....Respondents

Sri D.C.S. Rawat, Advocate for the appellant.

Dated: 9.8.2004

Hon. Rajesh Tandon, J.

This is an appeal against the order dated 19..11.1984 granting temporary injunction to the plaintiff respondent.

Briefly stated the facts giving rise to the present appeal are that the plaintiffs have filed a suit for permanent injunction against the defendant appellants restraining them from interfering with the plaintiff's right of collection fodder and fuel woods and also from using the land in dispute as pasture land.

Defendants have filed objection and have contended that no prima facie case is made out for grant of temporary injunction. The balance of convenience is in favour of the defendants and no irreparable loss would accrue to the plaintiff if the injunction is refused.

The District Judge allowed the application for temporary injunction vide impugned order and dismissed the objections filed by the defendants. Aggrieved against which, the present appeal has been filed.

The question with regard to exclusive customary rights of collecting fodder and fuel woods and for using the land in question as pasture land depends upon the proof of evidence. The relief of temporary injunction which has been granted by the trial Court will automatically result in decreeing the suit itself, and as such the injunction can be granted only after considering the documentary as well as the oral evidence adduced by the parties in the suit.

In view of the aforesaid facts, the appeal is allowed. The order dated 19.11.1984 passed by the District Judge, Tehri Garhwal is set aside. The District Judge, Tehri Garhwal is directed to decide the suit within four months. The parties are directed to maintain status quo till disposal of the suit. No order as to costs.

(Rajesh Tandon, J.)

9.8.2004

*Dhyani